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NOMINATION—FMC

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

NOMINATIONS

FEBRUARY 1, 1990

WILLIAM D. HATHAWAY, TO BE A MEMBER, FEDERAL MARITIME COMMISSION

Printed for the use of the
Committee on Commerce, Science, and Transportation

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NOMINATION—FMC

THURSDAY, FEBRUARY 1, 1990

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met pursuant to notice, at 10:23 a.m., in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings (chairman of the committee) presiding.

Staff members assigned to this hearing: Hal Creel, senior counsel, and Ruth Johnson, minority professional staff member.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The committee will come to order.

I apologize to our distinguished Senate friend, Senator Hathaway. We had the prayer breakfast that went a little bit longer, and I needed it more. So we are really delighted, Senator Hathaway, for you and your appointment.

And we are even further honored by our distinguished Majority Leader from Maine, Senator Mitchell. We would be glad to recognize you at this time.

STATEMENT OF HON. GEORGE J. MITCHELL, U.S. SENATOR FROM MAINE

Senator MITCHELL. Mr. Chairman, thank you very much for this opportunity to introduce our former colleague, and a man well known to many of us, Senator Bill Hathaway.

This is a happy confluence of man and position. Bill Hathaway has had an outstanding record of public service in Maine and representing the people of Maine in both the House of Representatives and the United States Senate.

As you know, Maine is a coastal state with a long and proud maritime tradition, and it is of vital importance to our state and one which continues to this day. And we are pleased that the President has seen fit to nominate a Maine man, Bill Hathaway, to this important maritime position.

Senator Hathaway is superbly qualified by experience, by intellect, by temperament, and by ability to serve in this position. I am not only proud to have served with him in a public sense for many years, but to call him a friend of more than a quarter century.

He is highly respected throughout our state and I know here in Washington for his distinguished record and career in public service. And I enthusiastically and wholeheartedly recommend Senator

Hathaway for confirmation to the position of Federal Maritime Commissioner.

The CHAIRMAN. Very good, Mr. Leader. We appreciate it.

I am going to sort of, not recess, but just stand at ease here a little while. Our good friend Senator Cohen is coming and I wanted to proceed because I know the pressure is on you to get back to the floor.

Senator MITCHELL. I thank you very much, Mr. Chairman, and Senator Pressler.

Mr. HATHAWAY. Thank you very much, George. I appreciate it.

The CHAIRMAN. Thank you.

Bill, before you make your statement, let us wait and see. I think Bill Cohen will be here momentarily.

Thank you very much.

Senator MITCHELL. Tell Senator Cohen for ten years I have been waiting for him.

The CHAIRMAN. Senator Pressler, do you have a question of Senator Mitchell?

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. No, I have no questions of Senator Mitchell. Indeed, I want to welcome the nominee and say that, if he is as careful a Commissioner as he is a golfer, we will have a very good Commission. I have enjoyed knowing him and seeing him frequently on the golf course, which now you will not be able to do so much of. I do not want to embarrass you here, but welcome you. You have my full support.

Mr. HATHAWAY. Thank you very much, Senator.

The CHAIRMAN. We will momentarily wait. We welcome Mary, his very charming wife, and son and daughter-in-law. The committee is glad to have the family with him.

Let us just hold tight for Senator Cohen.

[Pause.]

The CHAIRMAN. All right, the committee is in order. Senator Cohen, the Chair will recognize you.

STATEMENT OF HON. WILLIAM S. COHEN, U.S. SENATOR FROM MAINE

Senator COHEN. Thank you very much, Mr. Chairman. I appreciate having the opportunity to address the committee, and before I begin I will state for the record that Congresswoman Snowe would like her statement to be entered in the record on behalf of Senator Hathaway.

The CHAIRMAN. It will be included in the record.

Senator COHEN. Mr. Chairman, I have known Bill Hathaway I think at least 18 years, maybe longer. He suffers from two major handicaps: one is a Harvard education; the second is he is second to Nunn on the golf course, and I mean Sam Nunn on the golf course.

I checked with Senator Nunn as I left the Armed Services Committee hearing and asked him what his handicap was. He said: It is either nine or ten, but just tell Senator Hollings that Hathaway is second to me. So I do that to begin with.

But I have known him a long time and he in my judgment is very highly qualified to serve as a Commissioner with the Federal Maritime Commission.

As you know, he served four terms in the House. Among the committees he served on was the Education and Labor Committee, also Merchant Marine and Fisheries, which is particularly important, and also as a Senator served on the Finance Committee, Banking Committee, Labor and Human Resources Committee, Small Business, Select Committee on Intelligence.

I think this committee is painfully aware of the difficulty we are having now with our maritime industry. We had a Congressionally mandated and presidentially appointed Commission on Merchant Marine and Defense, and they concluded that our merchant marine is in grave danger. I have the figures here in my statement. I will not take the committee's time to point out how desperate that situation is.

But we need people of strong background, certainly in Congressional affairs, but also who have an interest in the maritime industry.

It is often said that clothes do not make the man, but sometimes they tell you something about the man. And I can say that this—I was going to say this was going to be the first time in my life that I've never seen Bill Hathaway with a lobster tie on.

But he has the lobster tie on, and that tells you something about where his heart really lies, and that he has always been committed to certainly interests of the fishing community, but also maintaining a very strong maritime industry. And so I think he is uniquely qualified, given his background and his interests, his intellect, and indeed his handicaps.

The CHAIRMAN. Very good. The committee is very appreciative for your appearance.

Senator Pressler, do you have any questions?

Senator PRESSLER. We thank you both. You are appearing in the best tradition of American politics. I think you, if I am not mistaken, were once opponents. I am glad to see you here as friends, and I support you both wholeheartedly.

The CHAIRMAN. I hope I can appoint my opponent to some commission.

Senator Cohen, the committee appreciates your appearance. Thank you very much.

Senator COHEN. Thank you.

The CHAIRMAN. Senator Hathaway, the committee and the Senators are very, very familiar with your interest in maritime affairs, as well as many, many other things. We would be delighted to hear from you at this time, sir.

[The statements, biographical sketch, and prehearing questions and answers follow:]

STATEMENT OF OLYMPIA J. SNOWE BEFORE THE SENATE

COMMERCE, SCIENCE AND TRANSPORTATION

SUBCOMMITTEE ON MERCHANT MARINE

FEBRUARY 1, 1990

Mr. Chairman, it is with great pleasure that I join the Maine Congressional delegation in supporting William D. Hathaway's appointment to the Federal Maritime Commission. In part, my support stems from Bill's distinguished record of serving Maine in the United States House of Representatives and the United States Senate. Also, though, it stems from having known Bill for many years, and having seen firsthand what an outstanding individual he is.

Bill Hathaway's dedication to public service is indicative of the commitment he will display as a Commissioner on the Federal Maritime Commission, and of the exceptional job he will do.

The role of the Federal Maritime Commission cannot be diminished in its impact upon United States trade and commerce. The Federal Maritime Commission regulates the waterborne foreign and domestic commerce of the United States. It ensures that United States international trade is open to all nations on fair and equitable terms, and protects against unauthorized, concerted activity in the waterborne commerce of the United States. These are vital responsibilities for the Commission and the Commissioners.

Bill Hathaway has consistently demonstrated his expertise on maritime matters, his willingness to serve, and his strong legal training. As a member of the House of Representatives, Bill served on the Education and Labor Committee, Merchant Marine and Fisheries Committee, and the Appropriations Committee. As a Senator, Bill served on the Labor and Human Resources Committee, the Banking Committee, Finance Committee, Small Business Committee, and the Select Committee on Intelligence. With this vast and varied background, Bill will bring a well-grounded understanding of the issues facing the United States maritime industry and a proven record of accomplishment in addressing them. I am confident that Bill is eminently, even uniquely, qualified to fulfill the duties of Commissioner on the Federal Maritime Commission.

Four fourteen years, Bill Hathaway faithfully served the people of the State of Maine as a member of their Congressional Delegation. During those years he displayed his dedication to the State and his constituents. As Commissioner on the Federal Maritime Commission, Bill Hathaway will serve the United States with equal dedication and devotion. I fully endorse William D. Hathaway's appointment as Commissioner on the Federal Maritime Commission.

JOSEPH E. BRENNAN
1st District, Maine

COMMITTEES
ARMED SERVICES
MERCHANT MARINE AND FISHERIES
SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL
MAJORITY WHIP AT-LARGE

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House of Representatives
Washington, DC 20515

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Augusta, ME 04330
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TOLL FREE NUMBER
1-800-446-4092

January 31, 1990

The Honorable Ernest F. Hollings
Chairman
Committee on Commerce, Science, and Transportation
Dirksen 508

Dear Senator Hollings:

I write in support of the nomination of William Hathaway to the Federal Maritime Commission. Bill Hathaway is a man dedicated to public service who will serve the Commission as honorably and capably as he has served his country and the State of Maine.

As a soldier in service to his country, a prisoner of war, an assistant county attorney, a four-term member of the House of Representatives, and as United States Senator, Bill has always held himself to the highest standards of honesty and integrity. He has set a worthy example for all who serve in government.

I believe that Bill's character and determination is exemplified by his military record. He entered the Army Air Corps in 1942 as a private, and while serving in Europe was shot down over Romania. He was held as a prisoner of war for several months, and by the time he was discharged in 1946 he had achieved the rank of captain.

Bill is well versed on the issues which face the Maritime Commission, having served on the House Merchant Marine & Fisheries Committee, the Senate Finance Committee, and the Senate Committee on Human Resources. He has, of course, been involved in the practice of law since being graduated from Harvard Law School in 1953.

In summary, I can think of no one more qualified nor responsible to serve as a Federal Maritime Commissioner. I therefore respectfully urge that the Committee look favorably on this nomination, and that Bill Hathaway be speedily confirmed in this appointment.

Sincerely,

Joseph E. Brennan
Member of Congress

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WALTER B. McCORMICK, JR., MINORITY CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
WASHINGTON, DC 20510-6125

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: Hathaway (Last) William (First) Dodd (Other)

Address: 6707 Wemberly Way (Current residence) 2550 M Street, N.W., 9th Floor (Business)

McLean, VA 22101 Washington, D.C. 20037

2. Position to which nominated: Federal Maritime Commissioner Date of nomination: 11/20/89

3. Date of birth: 2/21/24 (month) (day) (year) Place of birth: Cambridge, Massachusetts

4. Mantal status: Married Full name of Spouse: Mary Bird Hathaway

5. Names and ages of children: Susan Hathaway Boydston, 42 Fred William Hathaway, 33

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
Harvard College	1946-1949	AB	1949
Harvard Law School	1949-1953	JD	1953

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
1942-	1953	Railway Express Agency	Boston, MA	Freight Handling
		(Above interrupted by Military Service 1942—1946 and worked part-time during college and law school)		
1953-	1956	Law Partnership w/Frank M. Coffin	Lewiston, Maine	Law
1957-	1964	Self-employed	Lewiston, Maine	Law
1979	to date	Patton, Boggs & Blow	Washington, D.C.	Law

8. Government experience: List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

1955-1957	Assistant County Attorney	Auburn, Maine	Criminal Prosecutions
1956-1957	Part-time attorney for the Maine Employment Security Commission		
1957-1961	Hearing Examiner State Liquor Commission	Augusta, ME	Judge of Liquor Law Violations
1965-1973	Member, U.S. House of Representatives	Washington, D.C.	
1973-1979	Member, U.S. Senate	Washington, D.C.	
1977-1978	Member of the American Council on Intergovernmental Relations		

9. Political affiliations activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.

Miscellaneous contributions to candidates running for state and federal offices.

3

10. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable, and other organizations.

American Bar Association, Maine Bar Association, Massachusetts Bar Association

District of Columbia Bar Association, Burning Tree Golf Club, Former Members of

Congress Association (Member of the Board & Treasurer), Former Prisoners of

War in Romania Association, Pathways, Inc. (Association for Retarded Children)

Auburn, Maine

11. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.

WWII decorations: Air Medal, Purple Heart, Presidential Unit Citation, and

Prisoner of War Medal.

Distinguished Service Award of the Legislative Commission of the National

Education Association (1968); Annual Award of Merit from the National Association

of Public and Continuing Adult Education (1971); Rural Housing Award from the

Rural Housing Alliance (1974); the Taxpayers Friend Award from Taxation with

Representation, a public interest lobby (1977); the Man of the Year Award from

. (See Addendum A)

12. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials you have written.

Miscellaneous writings printed in the Congressional Record from 1965 through

1978.

ADDENDUM A

the Smaller Business Association of New England (1976); and the Bronze Key Award from the Maine National Council on Alcoholism (1978).

Honorary Degrees:(LLD) University of Maine, Orono, Maine; St. Joseph College, Alfred, Maine; St. Francis College Biddeford, Maine; Colby College, Waterville, Maine

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ANSWERS TO
QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS
PRIOR TO THE NOMINATION HEARING OF WILLIAM D. HATHAWAY
TO THE FEDERAL MARITIME COMMISSION
SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

1. Why do you want to become a Federal Maritime Commissioner?

I served 14 years in the House and Senate from 1965 to 1973 and found that experience to be very rewarding. During the past eleven years I have been in the private sector, and although I have enjoyed it, I realize there is a great deal more personal satisfaction in public service. Also, coming from New England I have had an abiding interest in maritime affairs and I accumulated some knowledge in that regard from my service in Congress, particularly from my service on the House Merchant Marine and Fisheries Committee. I believe because of my interest, background and motivation that I can make a contribution as a Commissioner.

2. What do you see as your role at the Federal Maritime Commission (FMC) in formulating the policy of the FMC? What will be your goals and objectives if you are confirmed as a Commissioner at the FMC?

I recognize first of all that the FMC is an independent regulatory agency whose primary mission is to implement and enforce the laws passed by Congress. As such, the FMC does not play a role in formulating U.S. maritime policy in the same manner as an Executive Branch agency. The Commission may, however, have to make policy choices when it comes to directing the use of its resources. As one member of this collegial body, I would expect to have input into these decisions. In addition, there may be situations in my role of Commissioner where more than one choice may be legally available. To that extent, policy considerations may enter into any decision process.

If confirmed, I will devote full time and attention to my responsibilities as a Commissioner. In that regard, and as a former Congressman and practicing attorney, I intend to apply the shipping statutes enacted by Congress to the specific facts before me in any given case.

3. In the biographical profile you provided to the Committee, you indicated that either you or the law firm with which you are currently associated represent or have represented or have represented several clients with maritime interests (Great Lakes Dredges and Docket Company, Maritime Overseas Shipping, and National Marine Manufacturers Association). Do you see any actual or potential conflict of interest between your representation of these clients and your duties if confirmed as a Commissioner at the FMC? How do you plan to resolve any such conflicts?

At this time I see no actual or potential conflict of interest with the clients listed in my biographical profile and my duties if confirmed as a Commissioner of the FMC. However, if a conflict should arise, I would recuse myself from participating in such a case.

4. Section 13(b)(5) of the Shipping Act of 1984, the Foreign Shipping Practices Act of 1988, and Section 19 of the Merchant Marine Act of 1920 allow the FMC to take certain actions to ensure that non-market barriers to ocean shipping do not burden the U.S. foreign commerce. These laws also authorize the FMC to retaliate against foreign governments that unduly impair access of U.S.-flag carriers to foreign trades. How active do you believe the FMC has been in pursuing unfair trade practices under these provisions? What would be your objectives with respect to implementation of these provisions by the FMC if you are confirmed?

The Commission can address adverse foreign maritime practices through a variety of means, section 19 of the Merchant Marine Act, 1920, section 13(b)(5) of the Shipping Act of 1984, and the Foreign Shipping Practices Act of 1988. As a result, it appears that the Commission has adequate tools to meet all unfair foreign maritime practices. Moreover, my review of the Commission's recent activities in this area reveals an agency ready and willing to employ its statutory authority for the benefit of U.S.-flag carriers and all others involved in our foreign commerce. It is my understanding that section 19 actions have more than tripled during the last 10 years as compared to the previous 10. In addition, the Commission has used its new authority under the Foreign Shipping Practices Act of 1988 against a situation with Taiwan and was able to successfully resolve the problem. With respect to section 13(b)(5) of the 1984 Act, I am advised there have been no formal petitions or informal requests from U.S.-flag carriers seeking relief under this provision. It is possible that the mere existence of section 13(b)(5) serves to inhibit foreign action that would deny U.S. carriers access to foreign cross trades.

I would urge that the Commission continue to aggressively use these provisions to seek solutions to problems created by foreign practices.

5. How does the self-policing mechanism of the Trans-Atlantic Enforcement Initiative operate? What incentive is there for carriers to participate in this program?

As I understand it, the North Atlantic self-policing program operates pursuant to a cooperative working agreement among certain U.S./North Atlantic carriers which is filed with the FMC. The participants have engaged a neutral body to audit and investigate their operations in the North Atlantic trades to determine compliance with tariffs, service contracts and agreements. I am told that this neutral body has access to all carrier documents, and the authority to require the cooperation of carrier employees or agents and to levy penalties for proven violations. The agreement is said to provide ample protection to assure that the neutral body functions equitably.

I assume that the incentive to participate in such a program would be a desire to see compliance with the shipping laws. Also, I would think that the more carriers which participate in a self-policing program, the greater the possibility of avoiding the self-destructive costs associated with departures from tariffs and service contracts. The FMC's bottom-line objective is the maintenance of fair and equitable trading conditions.

6. Have the provisions in the Shipping Act of 1984, which provide for "independent action" by conference members, affected rates and levels of service? If so, how?

My reading of the Commission's Section 18 Report on the Shipping Act of 1984 indicates that IA has had an effect on rates. The Report found that IA rates were generally lower than the comparable conference tariff rates. According to the results of the Commission's 1988 survey, which is included in the Report, shippers and carriers indicated that IA rates were generally between 1 to 25 percent lower than the tariff rates.

As for the impact of IA on service, my understanding is that approximately 70 percent of the carriers that responded to Commission surveys in 1988 advised that IA had no impact on service levels.

7. Have service contracts affected rates? If so, how?

The Commission's Section 18 Report on the Shipping Act of 1984 indicates that the impact of service contracts seems to vary from trade to trade. Service contracts appear to be more prevalent in the inbound U.S. trades than in the outbound trades. I noted in the Commission's Report that in the responses to surveys sent to both shippers and carriers in 1988, the majority of the respondents stated that their service contract rates were between 11 and 25 percent lower than comparable tariff rates.

STATEMENT OF HON. WILLIAM D. HATHAWAY

Mr. HATHAWAY. Thank you very much, Mr. Chairman. It is a real pleasure, in fact, I am overjoyed to be here this morning and to meet with both you and Senator Pressler.

I hope that the testimony of the Majority Leader and Senator Cohen was not given under oath, and I hope further that the committee does not conduct an investigation into the truth of the allegations they made about me.

I really appreciate their very kind remarks and the remarks that were put in the record by Congresswoman Snowe and Congressman Brennan, the other two members of the Maine delegation.

I am very proud of all four of them. They have served the state and the nation very well over the years. I have known all of them for a good number of years and I am happy to say that they are my close friends and I have enjoyed their companionship.

I want to commend Senator Mitchell and Senator Cohen, not only for appearing here this morning, but for being helpful when my nomination was pending at the White House.

I suppose I should say right at the outset, in view of the many allusions to golf that have been made, that I promise the committee that I will stay on the job 90 percent of the time. But sometimes, of course, it helps me to think if I get out in the open air.

I am honored to have been nominated by the President of the United States to this very important Commission and, if confirmed by the Senate, I shall do my best to justify the President's confidence in me.

I recognize that the Commission is a regulatory agency which has very clearly delineated jurisdiction over the ocean-borne foreign commerce and the domestic offshore commerce of the United States. And I bring with me no preconceived notions as to how the Commission should act in any particular situation.

However, as a former member of the House and the Senate and as a practicing attorney, I realize that my responsibility is to apply the laws enacted by Congress to the facts of the specific cases that come before the Commission.

The Shipping Act of 1984 was landmark legislation which significantly altered the Commission's regulation of our foreign commerce. The Federal Maritime Commission has just completed an extensive review of the impact of this Act, as directed by section 18 thereof, and soon the Act will be undergoing a further review by an Advisory Commission, many of the members of which have not yet been appointed. This Advisory Commission will be making its recommendations to Congress and I am looking forward to participating in this review process as a Commissioner, both with this committee and the House Committee on Merchant Marine and Fisheries.

During the time between my nomination and my appearance before this committee today, I have had the opportunity to see how the Commission operates and find out what has been accomplished in the last few years. I am very much impressed by the job that the Acting Chairman Jim Carey is doing, as well as his Co-Commissioners Ed Philbin and Frank Ivancie, and what they have done to curb commercial malpractices in the U.S. trades and to protect

U.S. interests with respect to actions taken by foreign governments, and the giant steps they have made in automating the tariffs.

Once fully implemented, this automated tariff filing and retrieval program should prove to be of great benefit to the shipping industry, to the Commission itself, especially in its enforcement efforts.

Mr. Chairman and Senator Pressler, I fully realize the importance of being a member of the Federal Maritime Commission and, if confirmed by this committee and the Senate, I shall work hard to justify your confidence in me.

Thank you very much, Mr. Chairman. And again I say it is a real pleasure to be here and I feel very comfortable with both of you.

The CHAIRMAN. Senator, let us hope now that, as our friend and with the influence that you already have with us and on the Hill, that you will keep us informed. We have a hard time keeping up with all the boards, the commissions, the endeavors of government, and the maritime has been way down the list in Congressional attention.

We have tried every gimmick in the book, particularly from the standpoint of national security. Now we move from national security to economic security. The Cold War is over. We move into the trade war.

Yes, there are a lot of foreign bottoms that we can ship American goods on, but before long we will find out that that is the leverage—the tariffs, the rates, and the control. And I hope you will keep that in mind, because this is a very dynamic situation.

We are not bashing Japan, Panamanian, or Liberian tankers, and foreign flags. We are bashing ourselves. I live in a maritime community and I can see from the operation the competition and the keenness of that competition and the delivery of the goods in an international competition on the high seas.

So tell us where we are lacking. For example, that computerization. There are some 700,000 pages of tariffs they have been putting out by hand, and we only have learned and now are getting it computerized.

Is there anything else over there? I know you have looked into it, in the job, in detail. Is there anything else that you need immediate help with over there at the Commission that you can think of, that we ought to know about?

Mr. HATHAWAY. Mr. Chairman, I do not believe there is anything that needs to be done immediately. There are some recommendations in the Federal Maritime Commission's conclusions that I would hope the committee would consider as modifications of the law.

The CHAIRMAN. That is the report on the 1984 Act?

Mr. HATHAWAY. Yes, that is the report under section 18 of the 1984 Act.

The CHAIRMAN. What highlights, what really comes to your attention in that report and those conclusions? Anything immediate that we ought to know?

Mr. HATHAWAY. No, I do not think there was anything immediate. As a matter of fact, the entire report could be characterized as

saying that the 1984 Act has worked quite well and that we really do not need any significant changes.

The changes recommended in the final chapter of the report are generally minor ones. For example, under section 9 the Commission recommends that service contracts be covered by the controlled carrier provision of the Act. And there are others similar to that which would straighten out various definitions with which the Commission has some problem over the years.

But nothing that has to be done immediately and nothing that is of great import. I think the '84 Act has, according to that report—I am not personally familiar with how it has worked, but according to the report it has worked out reasonably well.

The CHAIRMAN. Senator Pressler.

Senator PRESSLER. Let me ask a question that involves issues of trade and our relationship with other countries. Many foreign governments take actions to benefit their own national flag carriers or disadvantage U.S. flag carriers. In the Foreign Shipping Practices Act of 1988, the Federal Maritime Commission was given additional tools to respond to these situations.

Are the tools provided by the Foreign Shipping Practices Act adequate to allow the Commission to address these problems?

And more specifically, in every aspect of American life we have problems of how we treat other countries doing business here and how they treat us. And I have been accused of being anti-Japanese, and I am in certain business practices.

But also the European Common Market is unfair to us in agricultural trade. Our insurance companies cannot do business in other countries, such as Germany, while their companies can do business here. All across the board, we are the good guys.

I understand that other countries do things to benefit their own national flag carriers and hurt our flag carriers. What are you going to do about this?

Mr. HATHAWAY. Well, Senator Pressler, I am going to continue along the same road that the Commission has embarked itself on over the past few years. They have welcomed the additional tool given to it by the Trade Act of 1988. But of course, as you know, they had section 19 of the 1920 Act, as well as section 13(b)(5) of the '84 Act available to them to protect the U.S. interests in foreign trade.

From what I gather from talking with the Commissioners and from reading the report, all of these have been extremely helpful in making sure that the United States is not discriminated against with respect to foreign trade. And I know of no case in which any of the foreign governments or foreign carriers have gotten away with discrimination against us.

Most of the time, the Commission has not had to go to the full extent of the Act and impose penalties, because once the Commission initiated the action against these foreign countries they saw the light and ceased the practices that they had been doing.

Senator PRESSLER. Do you have any views as to the importance of the maritime industry in relation to our total transportation structure, and what initiatives to improve it do you have?

Mr. HATHAWAY. Well, I fully realize that the vast percentage of the goods in foreign commerce do go by ship. And although the

Commission is basically a regulatory Commission and not a policy-making Commission, I am mindful of the fact that the third purpose enunciated in the 1984 Act in section 2 thereof indicates that it is the Commission's responsibility to make sure that the United States shipping industry is protected.

To the extent that the laws under which the Commission operates permit me to, I shall certainly do everything I can to protect our industry.

Senator PRESSLER. Are you aware of any aspects of the Shipping Act of 1984 that may need reconsideration or revision? What are your specific recommendations?

Mr. HATHAWAY. Well, as I mentioned in answer to Senator Hollings' question, the final chapter of the report of the FMC under section 18 indicates that there are some changes needed. The one I mentioned with respect to section 9, and service contracts, and the various others that have been recommended by the Federal Maritime Commission.

The Federal Trade Commission has filed its evaluation of the 1984 Act and the Department of Transportation has also filed its report. The Advisory Committee will be meeting and studying the Act for about a year.

So I think we have to wait and see. We will probably be called before the Advisory Committee to testify about various matters that are in the FMC report, and probably by the end of the year we will be in a better position to judge just what changes ought to be made.

Senator PRESSLER. Thank you. I support you fully. I think we are very lucky to be getting your experience.

Mr. Chairman, many of the commissioners that we seem to approve in this panel are in their early thirties, where they are acquiring experience, and that is a positive thing. However, in this case we are getting the benefit of many years of experience, including serving as one of our colleagues here in the Senate.

I think it is a great act of public service that you are willing to take on these duties, and I congratulate you.

Mr. HATHAWAY. Thank you very much, Senator.

The CHAIRMAN. You must let the Senator win.

In addition to Congresswoman Snowe, Senator Inouye and Congressman Brennan have submitted statements, Senator Hathaway, for the record. Senator Inouye also submitted questions for the record, and perhaps our chairman of the Maritime Subcommittee, Senator Breaux, who wanted to be here—I know he has some questions and a statement. I think he is on his way.

Let me just say this with respect to Senator Pressler's very sage observation on the way that the Japanese are being unfair to us. Could it be that we are unfair to ourselves?

In other words, if I was in Japan running that government I would not change anything. It is working. They are richer than you and me 45 years after World War Two. And the only thing that would cause me to change is, of course, to make it to my economic interest.

Let market forces operate, rather than use these political, round-table, cry-baby, let us be fair, let us get a level playing field tactics.

These political and polemics, we have tried those now for 30 years; they have not worked.

We have got to awaken now with the competition. In Europe, EC 1992 is orchestrating and organizing, not for free trade but for competition, to band together as a very forceful international trade unit and the largest land free market in the entire world now, will exceed that of the United States.

And as old Lincoln said, now we have got to think, and you act and you disenthrall ourselves. And in that light, from your vantage point it worries me how we as politicians over on the one side continue to raise the standard of living, and we all support it, and yet on the other hand tell the competition that they have got to be fair and, worst of all, stand on the floor and tell all the executive leadership of the country and industry to get off the golf course.

I know them. I have worked with them intimately over the many, many years. They are still the most competitive that the world knows. They are not waiting on the United States Government. They are in downtown Budapest, Warsaw, right here this morning while we are talking. They are ready to invest and ready to compete.

But with the lack of a trade policy, we more or less force them to go offshore in order to develop.

If I am going to require a minimum wage, social security, unemployment, clean air, clean water, safe working conditions, and with the maritime rules of safety and everything else, and then you get a Chinese vessel that will come along for a dollar a day plus food, how are we going to maintain the maritime?

Should we have an SOL, standard of living, factor in those tariffs or what? We have got to think anew somehow to position ourselves to maintain the maritime industry.

We all come up and make the bold statements that we are for it. You are willing to serve in it. But from your vantage point and, as I indicated, your influence, study that thing and tell us what we can do, because if we do not maintain that maritime—we have lost now our national security friends in support, not lost entirely but a good bit, with the fall of the Wall and peace breaking out.

Now economic competition will be breaking out and people will begin to realize that they cannot ship unless they can get a certain line, unless they can get a certain agreement, and leverage will be brought. We know it and you know it, and I see it coming.

There has got to be a reconciliation in the policy of the United States with respect to trade and tariffs. Anything that you can suggest, the committee would be most appreciative.

Mr. HATHAWAY. Well, Mr. Chairman, after I have had some experience in the job, assuming that I am confirmed for it, I would be in a much better position than I am now, of course, to make any recommendations.

I would note the Federal Trade Commission report under section 18 of the 1984 Act does recommend a subsidy for U.S. vessels, but it also recommends, of course, doing away with the conference system. I do not think that we should do away with the conference system, but maybe additional subsidy is something we ought to think about.

We do have a great deal of leverage, I think, in view of the fact that the United States is a tremendous market for the Japanese and for the Europeans and for everybody else throughout the world and that they do not want to lose that market. And they can lose that market if, under the Trade Act of 1988 or section 19 or 13(b)(5), they do something to hurt us.

So I think that is going to at least keep them in line. That does not necessarily mean that the U.S. lines are going to get any more trade, but at least it means that they will not be discriminated against.

The CHAIRMAN. How many U.S. lines do we have? I am looking at foreign control. I can see that crowd now, they are merging and buying everything else. And then I look back to the old Rockefeller days where they, in the delivery of oil, had the pipeline and the control.

Now in the control of international maritime trade, how many shipping lines, U.S. lines, would you say? I just do not know.

Mr. HATHAWAY. I cannot tell you offhand, Senator. I know that the trade, the total trade, the United States has about six percent. Of course, if you exclude oil it is over 20 percent. But I cannot tell you offhand how many lines we have.

The CHAIRMAN. Well, we appreciate your expertise and willingness to serve, and we congratulate you on it.

Senator Breaux will have a statement and questions, and for any of the other members of the committee we will keep the record momentarily open.

Otherwise, I doubt if we can get the report out—today is Thursday. We will get it next week. We will try to get a markup session and get your appointment. I think we unanimously support it.

Mr. HATHAWAY. Thank you very much.

The CHAIRMAN. Thank you very much.

The committee will be in recess.

[Whereupon, at 10:54 a.m., the committee was adjourned.]

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